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10/519,546	08/23/2005	Trevor Ross Suggate	BEL-19148	2578
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Rankin, Hill & Clark LLP 23755 Lorain Road, Suite 200 North Olmsted, OH 44070				HARTMANN, GARY S
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/519,546  
Filing Date: August 23, 2005  
Appellant(s): SUGGATE, TREVOR ROSS

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Erik J. Overberger  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 25 June 2010 appealing from the Office action mailed 29 May 2009.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are pending in the application: 2-29. All previously withdrawn claims have been rejoined. Claims 2-29 have been rejected.

**(4) Status of Amendments After Final**

The examiner agrees with the appellant's statement of the status of amendments after final rejection contained in the brief.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The grounds of rejection on page 12 of the Appeal Brief is incorrect, as all withdrawn claims were treated in the Office actions of 02 February 2009 and 29 May 2009. Claims 2-29 are pending and claims 2-29 have been rejected.

### **(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

### **(8) Evidence Relied Upon**

6,701,563	SCHOMAKER	3-2004
3,808,757	GREENWOOD	5-1974
3,788,016	RICHARDSON	1-1974

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

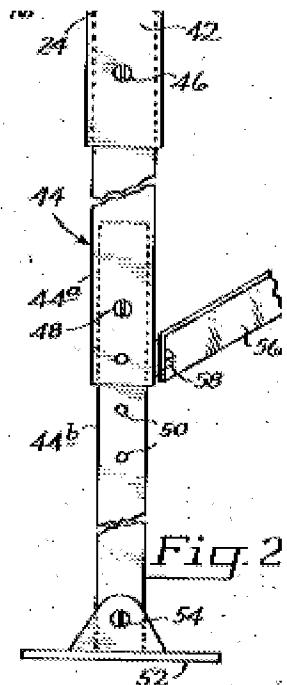
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-16, 19-22 and 24-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenwood (U.S. Patent 3,808,757).

Greenwood discloses a deck support having a prefabricated movable member (44a) engageable with a corresponding elongate member (44b). The movable member (44a) has an extension (56) which angles upwardly to meet other extensions (56) at a plate (38). While it is not specifically disclosed that this plate supports the deck, it is clear that flat surface would permit the lower surface of the deck to rest there upon. It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to have supported the deck with the extension/plate combination (56, 38) in order to increase the load bearing capacity of the deck.



There is a pivotable foot (52) extending from an end of the elongate member (44b).

The movable member (44a) includes a handrail support (42, 24, 76) which support prefabricated handrails (60, 62, 64, 66).

There are folded deck segments (24).

There is a pin (48) for locating the movable member (44b) relative to the elongate member (44a).

Regarding claim 8, this is a duplication of existing parts. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have including a plurality of support bearers in order to provide additional support as needed.

Regarding claims 12 and 16, the support appears to only receive one handrail upright. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

have arranged the support to receive a plurality of uprights in order to obtain suitable support for a particular handrail.

Regarding claim 14, the handrail upright is normal to extension (38).

Regarding claim 15, it is unclear if the extension covers a lower end of the support; however, the examiner takes official notice that this is a common configuration. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have configured Greenwood in this manner in order to support a heavy handrail.

The method is deemed to be met. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the method as claimed in order to obtain the structures shown in Greenwood.

Claims 17 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwood as applied above, and further in view of Richardson (U.S. Patent 3,788,016).

It is well known to include a roof with a deck structure in order to provide shelter to the deck, as exemplified by Richardson. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the roof of Richardson with the decks of Greenwood in order to shelter the deck of Greenwood.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwood as applied above, and further in view of Shomaker (U.S. Patent 6,701,563).

Shomaker teaches the claimed angle to be beneficial in increasing deck strength. For this reason, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the claimed angles with Greenwood.

#### **(10) Response to Argument**

The examiner substantially agrees with applicant's assessment in Part 1 regarding the Greenwood reference; however, applicant is incorrect in the assertion in the final paragraph of page 15 that the examiner concedes that "connected Struts 56 and Plate 38 don't support Paneling 40." The statement in the rejection is that this support is not specifically disclosed, not that it does not or cannot perform this function. It is the opinion of the examiner that plate (38) actually is intended to support paneling (40); however, because it is not specifically disclosed to do so, a 102(b) rejection was not possible. Therefore, the 103(a) rejection was made, specifically stating that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have supported the deck with the extension/plate combination (56, 38) in order to increase the load bearing capacity of the deck.

In the final paragraph of page 16, applicant argues that the adjustment between sections (44a and 44b) is to account for unlevel ground, not to change height. Looking to Figures 1 and 2, it can be seen that the change in the overall length of segment (44) defines the height of the deck (40) relative to the ground. In other words, the distance between foot (52) and deck (40) is the height of the deck above the ground at that position. Therefore, positioning segments (44a, 44b) relative to one another adjusts the height. From the point of view of applicant's arguments, for example, if the ground at one end of the deck is a foot higher than the ground at the other end (i.e., "unlevel ground"), then the height of one end of the deck will be adjusted to a foot lower

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relative to the ground than the height of the deck at the other end. To state that the distance of the deck above the ground at a particular location is not related to the height is not understood, since that is the definition of height.

Regarding the first full paragraph on page 17, the position of foot (52) is to be against the ground. Clearly, adjusting support (44a) upward relative to support (44b) meets the claim recitations. To suggest that a first member of a telescoping assembly moves relative to a second member, but the second does not move relative to the first does not make sense since each necessarily must move relative to the other.

In the second paragraph of page 17, applicant states that the "thresholds of any given mobile home have a set elevation." This is completely contrary to column 1, lines 39-41 of Greenwood, in which Greenwood specifically states that this is intended to be moved among locations and column 1, lines 28-31 in which it is stated to be adjustable relative to the ground. In other words, Greenwood is specifically designed to accommodate different ground heights relative to the position of a mobile home at different locations. Therefore, applicant's assertion regarding the "set elevation" are incorrect. Applicant has added various assumptions (i.e., "applicant assumes"); however, any assumptions by applicant does not change the fact that Greenwood is designed for and capable of height adjustment of the deck by relative movement of both parts (44a and 44b). Applicant "assumes" that the deck (40) is held in place by some undisclosed tertiary support while only lower leg (44b) is moved. Applicant implies that first positioning the foot (52) and lower leg (44b) on the ground and lifting leg (44a) upwards to its desired height above the ground is either impossible or beyond ordinary skill. One skilled in

the art would adjust the height in any manner desired, as both members move relative to one another.

The arguments in section 2.1.2 on page 18 have been addressed in the preceding paragraph.

In the first full paragraph of page 19, applicant repeats the assertion that the examiner concedes that the struts and plate don't support paneling 40. As stated in the first paragraph of this Examiner's Answer, no such concession has been made. The examiner is perplexed that applicant would even argue that the struts (56) and plate (38) are neither designed for nor capable of supporting deck (40). Turning to Figure 2, it can be seen that the strut (56) angles upwardly from the leg (44) toward the center of the deck (Figure 1). Additionally, bracing (34a, 34b) appears to be horizontally disposed along the bottom of the deck (40). The struts (56) and bracing (34a, 34b) meet at the tie plate (38), which is configured as a planar piece and appears to be directly under the bottom of deck (40). Contrary to applicant's arguments, that because this plate is not specifically disclosed to support the deck that it is therefore incapable of supporting the plate, it is the opinion of the examiner that the use of this tie plate as a support is so very clearly evident in Figure 1 that Greenwood saw no need to explain such a basic detail. Again, turning to Figure 1, in order to brace the border frame (24, 26, 28, 30), bracing (34a, 34b) would connect at the border frame. As can be seen in Figure 2, border frame (24) supports deck (40). In order to brace the border frame, bracing (34a, 34b) must necessarily be at the same elevation as the border frame. Therefore, the examiner contends that, like border frame (24, 26, 28, 30), bracing (34a, 34b) is positioned such that it abuts/supports deck (40). Turning again to Figure 1, this horizontal bracing (34a, 34b) extends across the bottom of deck (40) to the center tie plate

(38) which is also tied in with upwardly extending bracing (56). The deck rests upon that plate and forces thereon are absorbed by bracing (56) which transmits any load thereon into supports (44) to the ground. Again, only because this is not specifically disclosed, a 102(b) rejection was not made. It is also noted that claim language is that the extension (56) is “arranged to” directly support the deck. Clearly, it is within ordinary skill to have considered this structure to be arranged for that purpose; therefore, the 103(a) rejection was made which addresses this issue.

Continuing with applicant’s logic regarding this bracing structure, if one skilled in the art did not consider plate (38) to be a possible support, then the deck would be supported only at its outer perimeter by the border frame (24, 26, 28, 30). Applicant is essentially arguing that it is beyond ordinary skill to have considered supporting the deck from existing braces (34a, 34b, 56). Applicant is essentially arguing that it is beyond ordinary skill to have given a deck structure support at any position other than the perimeter, even though additional bracing is shown. Clearly all of this bracing is designed to support the deck as well as the frame and one skilled in the art would have recognized this. To have made a deck supported only by a lip of border frame (24, see Figure 2) without any regard for support in an interior portion of the deck (40) would have been unsafe. Because user safety and structural integrity are basic considerations for one skilled in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have arranged the plate (38) supported by strut (56) extending from leg (44) to directly support the deck (40).

Regarding the argument that struts would tend to pivot downward if supporting a load, this is beyond any scope of any pending claim. Depending upon the force of the load, some movement of supporting structures could occur. This is basic physics. Every structure,

including the largest skyscrapers and bridges, are subject to movement dependent upon loading and temperature. To suggest that some movement based upon weight on the deck indicates that the bracing is incapable of supporting weight and is therefore beyond ordinary skill is incorrect.

All further arguments regarding Greenwood essentially restate previously addressed arguments. For the reasons given above, using the parts of Greenwood as central support for the deck is well within ordinary skill. Applicant has given no additional arguments regarding the additional rejections; therefore, no additional reply is submitted herewith.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Gary Hartmann/  
Primary Examiner  
Art Unit 3671

Conferees:

Thomas B. Will /tbw/

Heather Shackelford /hcs/